

**Workshop Report**

**Administrative Justice and Two-Level Adjudication**

**19-20/11/2011**

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# **Workshop Report**

## **Administrative Justice and Two-Level Adjudication**

The Judicial Council held a workshop under the title “Administrative Justice and Two-Level Adjudication” related to the administrative justice in the Hashemite Kingdom of Jordan. The Administrative Units of the Judicial Council organized this workshop, which was held during 19-20/11/2011.

### **Summary:**

The Administrative Units at the Judicial Council, in collaboration with the USAID Rule of Law project, organized a workshop entitled “Administrative Justice and Two-Level Adjudication”. Said workshop was held to support the implementation of the constitutional amendments, a great part of which affected the judicial authority, particularly the administrative justice. According to the amendments, administrative justice will start being adjudicated on two levels, contrary to the current status whereby the Court of Higher Justice has jurisdiction, according to its law, to adjudicate administrative disputes and its rulings are final and cannot be appealed in any forms of appeal. The workshop aims at developing the key pillars that will constitute the base for a new law that regulates the administrative judiciary to become a two-level one.

The workshop was attended by the Chief Justice, Judicial Council members, Court of Higher Justice judges, and head of the prosecution before the administrative court as well as the Minister of Justice.

To achieve the primary goal and the aspired objective of drafting a law that regulates the administrative judiciary and two-level adjudication, it was necessary to review the experience of other countries that apply such model in administrative disputes. To this end, the Judicial Council invited the President of the Council in Egypt to attend the workshop and participate in it by presenting the experience of Egypt in relation to administrative judiciary and the adopted work mechanisms and procedures. The invitation was accepted and the following delegation members attended the workshop from Egypt:

- Dr. Hamdi Mohammad Ameen Al-Wakeel, advisor, deputy president of the Council, supervisor of administrative and disciplinary courts.
- Mohammad Zaki Musa, advisor, deputy president of the Council and the secretary general.
- Mohammad Mahmmod Ismael Ruslan, advisor, member of the technical secretariat of the special council.

At the same time, the role of administrative jurisprudence cannot be ignored in this regard given its high importance and relevance. Accordingly, a number of administrative law professors from Jordanian universities were invited to join to solicit their opinions, views and aspirations related to administrative justice in the future and upcoming phase. In addition, the views of lawyers were also solicited through representatives from the Bar Association.

### **The Legislative Framework and the Historical Development of the Judiciary in Jordan**

The legislature regulated the adjudication process and disputes resolution among individuals by tasking it to the judiciary which is presided over by independent judges and which is explicit in the following constitutional articles:

- Article 27 of the amended Jordanian Constitution states that (The Judicial Power is independent and shall be exercised by the courts of law in their varying types and degrees. All judgments shall be given in accordance with the law and pronounced in the name of the King.).
- Article 101 of the Jordanian Constitution states that (The courts shall be open to all and shall be free from any interference in their affairs.)

According to the article in the Constitution, the resolution of all disputes, including those with public administrations, must be done through the judiciary. Accordingly, article 100 of the Jordanian Constitution of 1952, prior to its amendment, stated that (The establishment of the various courts, their categories, their divisions, their jurisdiction and their administration shall be by virtue of a special law, provided that such law provides for the establishment of a High Court of Justice). Based on this article, the Formation of Regular Courts Law No. 26 of 1952 was issued, article 9 of which stated the following: (a Court of Cassation shall be established in Amman, formed of two chiefs and a number of judges as needed and it shall convene as a Court of Cassation and a Court of Higher Justice by a chief and four judges at a minimum).

Said text continued to be applied until 1989 when the law amending the Regular Courts Formation Law was issued by which the Court of Higher Justices was separated from the Court of Cassation. Said amended came in conjunction with the issuance of the temporary Court of Higher Justice Law No. 11 of 1989 to be the first legislation that regulated the administrative judiciary in Jordan.

Several developments related to the legislations governing the administrative judiciary in Jordan succeeded whereby the Court of Higher Justice Law No. 12 of 1992 was issued and is still in force. The 1992 law expanded the jurisdiction of the Court of Higher Justice as follows:

- The Court of Higher Justice became of court of absolute jurisdiction as opposed to a court of annulment. Accordingly, the court became specialized in ordering compensation for the appealing party for damages resulting from the decision subject of the appeal.

- Added to its mandate was deciding into motions submitted for suspending the application of temporary laws that are unconstitutional and the regulations that violate the law and the Constitution.

As for the mechanism through which to access the Court of Higher Justice, all cancellation and compensation cases brought before it must be filed through legal agents (lawyers) who have been practicing law for a minimum of five years or are law professors holding the rank of a professor at one of the Jordanian universities. As for public administration entities, the chief prosecutor before the administrative court or his/her designated assistants would represent them, whether as plaintiffs or defendants.

Currently, the Court of Higher Justice is convened by one or more panels formed by the chief judges of the court and is comprised of a chief and at least four judges. Its decision are issued either unanimously or by a majority of votes and its decisions are final and cannot be appealed by any means of appeal.

The development and progress of the administrative judiciary in the Kingdom did not stop at that stage. The constitutional amendments that touched on the judicial authority placed high importance on the criticism that was directed to the litigation procedures before the administrative judiciary in Jordan. The amendments introduced the concept of litigation at two stages by amending article 100 of the Constitution to become as follows:

**(The establishment of the various courts, their categories, their divisions, their jurisdiction and their administration shall be by virtue of a special law, provided that such law provides for the establishment of a High Court of Justice, whose law shall state that the administrative judiciary should be at two levels.)**

Since establishing the two-level administrative judiciary requires a regulatory framework to govern it, the workshop aimed at developing recommendations and suggestions that would assist in developing a draft law that would regulate said issue.

## Workshop Content and Presentations

The workshop agenda was started off by a welcoming and opening speech by the Chief Justice followed by a speech by the Deputy President of the State Council in Egypt. A series of presentations were delivered on administrative judiciary in Jordan, and future outlook on the new law. Said presentations were prepared in advance and were both in the form of PowerPoint presentations and discussion. In addition, a paper was prepared and presented by the chief judge of the Court of Higher Justice, the head of the prosecution before the Court of Higher Justice, and a Court of Higher Justice judge.

The Deputy President of the State Council of Egypt also presented the experience of his country through a discussion paper that was presented over a period of two days. The paper covered the historical evolution of the Council, its establishment, the different phases it underwent till it reached its current organization, and means of establishing an administrative judiciary that is adjudicated at two levels and the corresponding conditions and circumstances that paralleled such measures that were undertaken in this regard.

The views and future vision of administrative law professors at Jordanian universities were discussed with regard to the to-be drafted law that will regulate the work of the administrative justice system to become comprehensive and on two levels through work papers and presentations that were shared with workshop attendees over the two days of the workshop as outlined in the table below:

	Subject	Speaker
1.	Government's Delegates	Dr. Zuhair Qaddoura
2.	The Structure of the Administrative Justice System	Prof. Dr. Suleiman Batarseh
3.	A two-Level Administrative Justice System as a Necessity Required by Law and Necessitated by the Reality	Prof. Dr. Salim Hatamleh
4.	The First Instance Administrative Court and its Jurisdiction	Dr. Osama Al-Nueimat
5.	The Higher Administrative Court	Prof. Dr. Nafees Madanat

To reach to the basic pillars that must be encompassed in a draft administrative law that regulates the litigation process to become on two levels, a questionnaire was prepared based on the discussion paper presented by chief judge of the Court of Higher Justice that was shared with and presented to workshop attendees to fill it out. In addition, the questionnaire also included open ended questions that allows attendees to express their views and opinions. Based in the tabulation of

questionnaire results and the assimilation of their views and suggestions, a draft law pertinent to the administrative judiciary will be drafted.

## Questionnaire Analysis Results

The questionnaire that was distributed among judges and participants included several basic pillars related to the new draft law on Administrative Justice. Said pillars covered the following:

### First: First Instance Administrative Court

- First Instance Administrative Court Location

No./ % of Responses	One Court Based in Amman	Three Courts in the north, the middle and the south)	No Answer	Total
%	48.1	40.7	11.1	100

- Formation of the Presiding Panel and the Number of its Member

Paragraph	%	Strongly Disagree	Disagree	Agree	Strongly Agree	No Answer	Total
The court shall be convened by a panel or more formed by the chief judge and each comprised of a president and one member at least	%	11.1	22.2	22.2	18.5	25.9	100

- The Exclusive Jurisdiction of the First Instance Administrative Court in Appeals Filed by Concerned Parties

Paragraph	%	Strongly Disagree	Disagree	Agree	Strongly Agree	No Answer	Total
Appeals in elections of the following local councils: chambers of industry and trade, syndicates, societies and clubs registered in the Kingdom, all elections appeals carried out according to laws and regulations in force and which did not grant such jurisdiction to any other court in accordance with special articles	%	11.1	3.7	63	22.2	0	100
Appeals filed by concerned parties related to final administrative decisions issued pertaining to appointments in public jobs, annual raises,	%	11.1	3.7	51.9	25.9	7.4	100



<b>Paragraph</b>	<b>%</b>	<b>Strongly Disagree</b>	<b>Disagree</b>	<b>Agree</b>	<b>Strongly Agree</b>	<b>No Answer</b>	<b>Total</b>
promotion, transfers, and secondments							
Requests of public administration employees to cancel final administrative decisions issued in their regard related to their retirement, early retirement, dismissal, loss of jobs or suspension from work.	%	11.1	0	44.4	40.7	3.7	100
Requests of public administration employees to cancel final administrative decisions issued in their regard by disciplinary authorities	%	11.1	0	51.9	29.6	7.4	100
Disputes related to salaries, benefits, bonuses, and accrued retirement rights of public administration employees, retired employees or their heirs.	%	11.1	11.1	40.7	29.6	7.4	100
Appeals filed by the injured party to suspend the application of a regulation, instruction, decision or measure based on the violation of the regulation to the law, or the violation of the instructions to the regulations or the law pursuant to which it was issued, or the violation of the decision or measure to the law, the regulation or instructions on which it was based.	%	25.9	7.4	29.6	29.6	7.4	100
Appeals, disputes and issues concerned within the jurisdiction of the First Instance Administrative Court pursuant to any other law.	%	11.1	0	55.6	25.9	7.4	100
Cases filed by any party injured by the cancellation of final administrative decisions, even if it was immune by the law according to which it was issued.	%	11.1	0	51.9	33.3	3.7	100
Appeals in any final	%	14.8	7.4	48.1	22.2	7.4	100

Paragraph	%	Strongly Disagree	Disagree	Agree	Strongly Agree	No Answer	Total
decision issued by an administrative body with judicial jurisdiction, except for decisions issued by reconciliation and arbitration bodies related to work disputes.							
The First Instance Administrative Court specializes in compensation requests related to the decisions and measures mentioned above.	%	11.1	0	51.9	25.9	11.1	100

- Procedures followed before the First Instance Administrative Court in terms of time periods for appealing administrative decisions, time periods for submitting evidences lists and attachments in addition to the legislation regulating the adjudication procedures before it.

Paragraph	%	Strongly Disagree	Disagree	Agree	Strongly Agree	No Answer	Total
The time period for filing a case shall be 60 days from the next day on which the administrative decision subject of the appeal is served or has been known with no doubt by the concerned party.	%	0	0	66.7	33.3	0	100
The case motion/list must be signed by a practicing lawyer with not less than five (5) years of experience	%	0	0	55.6	37	7.4	100
The plaintiff must attach to the case the list of evidences available on hand, the names of witnesses, and the facts he/she wishes to prove through the personal evidence as well as the list of evidences available with others or with the defendant.	%	0	7.4	48.1	40.7	3.7	100
The Time period for filing the response list is 30 days	%	7.4	18.5	44.4	25.9	3.7	100
The response list must enclose the evidences on hand by the respondent, the	%	0	0	63	33.3	3.7	100

Paragraph	%	Strongly Disagree	Disagree	Agree	Strongly Agree	No Answer	Total
names of witnesses and facts he/she wishes to prove by personal evidence and the list of evidences available with others or the other party.							
The plaintiff may reply to the list of response and submit rebuttal evidence within 10 days	%	3.7	11.1	44.4	33.3	7.4	100
A specific (case management) model must be adopted before the First Instance Administrative Court.	%	11.1	18.5	40.7	14.8	14.8	100
A specific (judicial mediation) model must be adopted before the First Instance Administrative Court.	%	11.1	37	18.5	22.2	11.1	100
The provisions of the Civil Procedures Code on force related to the presence and absence of parties and case dismissal and renewal shall be applied.	%	14.8	22.2	29.6	25.9	7.4	100
The First Instance Administrative Court review cases filed before it through hearings that shall be public.	%	0	0	51.9	44.4	3.7	100
Judgments issued by the First Instance Administrative Court are subject to the provisions of the Civil Procedures Code in force with the exception of what is unique to the nature of administrative cases.	%	11.1	18.5	48.1	14.8	7.4	100
When conflict over jurisdiction between an administrative court and any other court arises, a reference shall be appointed by a judicial panel comprised of the chief judge of the cassation court as president and the membership of the chief judge of the court of higher justice and a judge from the cassation court and the	%	0	11.1	55.6	25.9	7.4	100

Paragraph	%	Strongly Disagree	Disagree	Agree	Strongly Agree	No Answer	Total
court of higher justice appointed by the Judicial Council, to review the case.							

**Second: The Higher Administrative Court pillar, which included the following:**

- The formation of the Higher Administrative Court, the number of its members and appointment requirements.

Paragraph	%	Strongly Disagree	Disagree	Agree	Strongly Agree	No Answer	Total
Keep appointment terms related to the chief judge of the court of higher justice and its judges as well as the head of the prosecution before the court of higher justice as currently stipulated in the Court of Higher Justice Law related to the appointment of the chief judge of the court of higher justice and its judges as well as the head of the prosecution before it.	%	11.1	18.5	33.3	37	0	100
The legal provisions that apply to regular judges shall apply to the chief judge of the higher administrative court and its judges as well as the head of the prosecution before the administrative court and his/her assistants. The chief judge of the higher court of administrative justice shall be of the same rank of the head of the cassation court and its judge shall have the same rank as the cassation court judge.	%	0	0	51.9	44.4	3.7	100
The Higher Administrative Court shall convene by a panel president and at least two members.	%	22.2	25.9	14.8	22.2	14.8	100

- Appeals before the Higher Administrative Court in terms of time periods, exchange of lists and its jurisdiction in reviewing appeals in all decisions issued by the first instance court.

Paragraph	%	Strongly Disagree	Disagree	Agree	Strongly Agree	No Answer	Total
The Higher Administrative Court is the sole court with jurisdiction over appeals filed before it related to all final judgments issued by the First Instance Administrative Court.	%	3.7	18.5	40.7	29.6	7.4	100
Confining appeals before the Higher Administrative Court to specific rulings related to final judgments issued by the First Instance Administrative Court violated article 10 of the Constitution in its amended text which stipulates that (The establishment of the various courts, their categories, their divisions, their jurisdiction and their administration shall be by virtue of a special law, provided that such law provides for the establishment of a High Court of Justice, whose law shall state that the administrative judiciary should be at two levels)	%	3.7	22.2	44.4	18.5	11.1	100
The time period for appeal before the Higher Administrative Court shall be 30 days from the following day on which the First Instance Administrative Court issued its final judgment.	%	3.7	22.2	44.4	18.5	11.1	100
The list of appeal must be signed by a practicing lawyer with no less than 5 years of experience.	%	0	3.7	59.3	33.3	3.7	100
The party appealed against may file a list of response with 15 days after the day on which he/she was served the appeal list.	%	0	7.4	59.3	29.6	3.7	100

<b>Paragraph</b>	<b>%</b>	<b>Strongly Disagree</b>	<b>Disagree</b>	<b>Agree</b>	<b>Strongly Agree</b>	<b>No Answer</b>	<b>Total</b>
The Higher Administrative Court shall review appeals brought before it by auditing the decisions being appealed unless it decided by itself or based on the request of either party to review the case through hearings.	%	0	3.7	40.7	48.1	7.4	100
Either party is not allowed to appear before the court unless through a lawyer who meets the terms that must be met by lawyers who can sign the list of appeal. If the party of either lawyer is not present, the court shall review the case based on the hearing minutes and the lists and documents available and shall issue its decision accordingly.	%	0	3.7	55.6	37	3.7	100
If the Higher Administrative Court found the decision subject of the appeal in compliance with the law it shall endorse it, but if it found it to be contradictory to law it shall annul it and decided on the case, It also may send the case back to the court that issued the decision.	%	0	7.4	40.7	44.4	7.4	100
The ruling of the Higher Administrative Court shall be final and cannot be appealed or objected to in any methods of appeal. However, the Higher Administrative Court may reconsider a decision it issued in any case if it became clear to it that it may have rejected the appeal on the basis of formality that is in contradiction with the law.	%	0	0	40.7	51.9	7.4	100

- Fees to be paid by the appealing party and setting its minimum and maximum levels.

Paragraph	%	Strongly Disagree	Disagree	Agree	Strongly Agree	No Answer	Total
Upon filing the appeal, fees that are determined by the chief judge of the first instance administrative court or the chief judge of the higher administrative court according to the case shall be collected provide that it is not less hat JD100 and not more than JD500.	%	7.4	7.4	48.1	29.6	7.4	100
When filing a motion for compensation, fees outlined in the court fees regulation in force shall be applied, unless otherwise specifically provided for.	%	7.4	3.7	44.4	29.6	14.8	100

**Third: Prosecution Body Before the Administrative Court pillar, which included the following:**

- The establishment and formation of the prosecution body before the administrative court in addition to its role and jurisdiction in relation for settlements and reconciliation with case parties brought before the administrative courts.

Paragraph	%	Strongly Disagree	Disagree	Agree	Strongly Agree	No Answer	Total
The head of the prosecution body before the administrative court shall be formed at the Higher Administrative Court formed of a president holding the rank of a cassation judge and a number of assistants, as needed, holding a rank not less than third.	%	0	3.7	55.6	33.3	7.4	100
The head of the Prosecution body before the administrative court, or any of his/her assistants designated by him/her in writing, shall represent the public administration before the higher	%	0	0	55.6	33.3	11.1	100

<b>Paragraph</b>	<b>%</b>	<b>Strongly Disagree</b>	<b>Disagree</b>	<b>Agree</b>	<b>Strongly Agree</b>	<b>No Answer</b>	<b>Total</b>
administrative court and the first instance administrative court.							
Grant the head of the Prosecution body before the administrative court or his/her designee the authority to settle, reconcile or transfer the case to judicial mediation	%	3.7	14.8	37	29.6	14.8	100
Grant the head of the Prosecution body before the administrative court a role in classifying appeals filed before the higher administrative court and the first instance administrative court such that priority for review would be determined according to said classification.	%	0	14.8	51.9	22.2	11.1	100
The Assistant of the head of the Prosecution body before the administrative court may not be transferred before the lapse of five years of service in said department.	%	0	3.7	55.6	29.6	11.1	100
A special regulation governing the Prosecution body before the administrative court must be issued that regulates its work and all related affairs.	%	3.7	3.7	48.1	33.3	11.1	100



## Conclusion

After reviewing workshop results and the papers and presentations shared by participants as well as tabulation of questionnaire results and the opinions of judges and participants, the Judicial Council will proceed, in collaboration with its Administrative Units, in preparing a draft law that regulates the administrative judiciary in a way that is in line with Royal directives and vision and the recent constitutional amendments. After completing the draft law, it will be distributed among judges and published on the Judicial Council's website to solicit the views of all those concerned and review the draft that was developed and amend it and issue a revised final draft in preparation for its endorsement.

## Appendixes

	Appendix	Participant
1.	Workshop Agenda	
2.	List of Participants	
3.	Chief Justice Speech	H.E. Judge Mohammad Al Mahameed
4.	Deputy President of the State Council of Egypt Speech	Advisor Hamdi Mohammad Ameen Al Wakeel
5.	Working Paper of the Deputy President of the State Council of Egypt	Advisor Hamdi Mohammad Ameen Al Wakeel
6.	Introduction by the Chief Judge of the Court of Higher Justice	Judge Fouad Sweidan
7.	Introduction by the Chief Prosecutor before the Court of Higher Justice	Judge Basel Abu Anzeh
8.	Working Paper entitled a Vision for a Two-Level Administrative Justice	Judge Dr. Akram Masaadeh
9.	Working Paper entitled ?????	Dr. Zuhair Qadoura
10.	Working Paper entitled the Structure of the Administrative Judiciary	Prof. Dr. Suleiman Batarseh
11.	Working Paper entitled A two-Level Administrative Justice System as a Necessity Required by Law and Necessitated by the Reality	Prof. Dr. Salim Hatamleh
12.	Working Paper Entitled the First Instance Administrative Court and its Jurisdiction	Dr. Osama Al Nueimat
13.	Working Paper Entitled the Higher Administrative Court	Prof. Dr. Nafees Madanat
14.	Questionnaire	

